



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 17, 2005

Mr. Carey E. Smith
General Counsel
Texas Health and Human Services Commission
P. O. Box 13247
Austin, Texas 78711

OR2005-01453

Dear Mr. Smith:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 217859.

The Texas Health and Human Services Commission (the "commission") received a request for the "the list or database . . . of all Texas Medicaid providers, including their 9 digit Medicaid identification numbers." You inform us that the commission has released a listing of the providers but claim that the Medicaid identification numbers are excepted from public disclosure under section 552.136 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also received comments submitted by the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Section 552.136 of the Government Code provides:

(a) In this section, "access device" means a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to:

- (1) obtain money, goods, services, or another thing of value; or
- (2) initiate a transfer of funds other than a transfer originated solely by paper instrument.

(b) Notwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.

Gov't Code § 552.136. The commission explains that the Medicaid provider numbers are assigned to providers who have been accepted into the Medicaid program. You state that these numbers are assigned for identification and billing purposes. As such, they "may be used to obtain money from the Medicaid program or to initiate the transfer of funds from the program." Based on these representations, we conclude that the Medicaid identification numbers that you have marked are excepted from disclosure pursuant to section 552.136 of the Government Code.

Finally, you ask this office to issue the commission a previous determination authorizing it to withhold Medicaid provider numbers. After due consideration, we have decided to grant your request. Therefore, this letter ruling shall serve as a previous determination under section 552.301(a) that the commission must withhold Medicaid provider numbers under section 552.136 of the Government Code. *See* Open Records Decision No. 673 (2001). Moreover, so long as the elements of law, fact and circumstances do not change so as to no longer support the findings set forth above, the commission need not ask for a decision from this office again with respect to this type of information requested of the commission under Chapter 552 of the Government Code. *Id.*

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

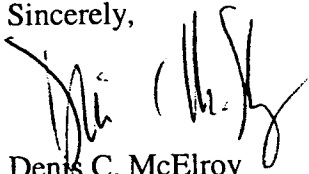
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss of the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Denis C. McElroy
Assistant Attorney General
Open Records Division

DCM/jev

Ref: ID# 217859

Enc: Submitted documents

c: Mr. James Kelfer
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(w/o enclosures)